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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 CR 579 (ALC)

5 SCOTT STAMMERS,

6 Defendant.

7 -----x

8 New York, N.Y.

9 April 28, 2016

11:34 a.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the

16 Southern District of New York

EMIL J. BOVE, III

17 MICHAEL LOCKARD

Assistant United States Attorneys

18 SEAN M. MAHER

19 Attorney for Defendant

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1 (Case called)

2 MR. BOVE: Good morning, your Honor. Emil Bove and
3 Michael Lockard for the government.

4 MR. MAHER: Good morning. Sean Maher for
5 Mr. Stammers, who's sitting here next to me. Good morning.

6 THE COURT: Good morning. Good morning, Mr. Stammers.

7 THE DEFENDANT: Good morning, sir.

8 THE COURT: We're here today to impose sentence in the
9 case of United States v. Scott Stammers. In preparation for
10 today's proceeding I reviewed the presentence report. I've
11 reviewed the submissions by the defense, as well as the
12 submissions by the government.

13 Is there anything else I should have, counsel?

14 MR. BOVE: No, your Honor.

15 MR. MAHER: No.

16 THE COURT: Okay. And I reviewed the proceeding
17 before Judge Cott and I accept the guilty plea and we will
18 continue. Are both sides ready for sentencing today?

19 MR. BOVE: Yes, Judge.

20 MR. MAHER: Yes.

21 THE COURT: And, Mr. Stammers, are you ready for
22 sentencing today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Defense counsel, have you reviewed
25 the presentence report with your client? I know that you've

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1 read it because I've seen your objections to it, but have you
2 reviewed the presentence report with your client?

3 MR. MAHER: Yes, I have.

4 THE COURT: Mr. Stammers, have you had an opportunity
5 to review the presentence report with your attorney and discuss
6 any objections you might have?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Counsel for the government, have you also
9 reviewed the presentence report?

10 MR. BOVE: Yes.

11 THE COURT: Are there any objections to anything in
12 the presentence report by the government?

13 MR. BOVE: No, your Honor.

14 THE COURT: Although I am no longer required to
15 strictly adhere to the sentence guidelines, I am still required
16 to consider the applicable guidelines in imposing sentence, and
17 to do so it's necessary that we accurately calculate the
18 sentencing guideline range. So we need to turn to several of
19 the objections raised by the defense regarding the guidelines.

20 I also note there were some other objections indicated
21 in the presentence report, objections that the defendant had
22 aside from the guideline calculation. It seems that all of
23 those other objections are incorporated in the current report,
24 but correct me if I'm incorrect about that, counsel?

25 MR. MAHER: You're correct. Some of the factual

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1 objections that I made, there has been basically a bracketed
2 sentence added. But our position is -- and then my further
3 objection was that the entire position be the position of the
4 paragraph. That is the only remaining issue for those types of
5 paragraphs.

6 THE COURT: Okay. Let's turn to the guideline
7 calculation. Let's turn to the special offense characteristic.
8 Pursuant to 2D1.1(b)(5), because the offense involved the
9 importation of amphetamine and the defendant is not subject to
10 an adjustment under 3B1.2 for mitigating role, the offense
11 level is increased by two levels.

12 I've read the submissions. Let me hear briefly from
13 the defense anything else you want to add.

14 MR. MAHER: No, your Honor. You've heard the full
15 argument by codefendant Valkovic, which I have incorporated by
16 reference. I also adopt the arguments made by codefendant
17 Peralta, which I think were a little bit different but similar.
18 And I think the issue is clear before the Court. Our position
19 regarding the importation is because it was basically inchoate,
20 he shouldn't be assessed the levels.

21 THE COURT: Anything else from the government on this?

22 MR. BOVE: Just with respect to that point that was
23 just made by counsel, your Honor, I think that we're all
24 directed by binding precedent to presume that the author of
25 these enhancements meant what they said and crafted them

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1 intentionally. And so when you look at the (b)(5) enhancement,
2 as your Honor has ruled previously, it speaks to the offense in
3 general. And here, although it's true that it's an inchoate
4 offense, a feature of that offense was in fact to import
5 methamphetamine. Moreover, as the probation office has
6 reasoned, methamphetamine was in fact imported as a result of
7 this offense.

8 I think the point is really made in reference to the
9 (b)(3) enhancement which reads, if the defendant unlawfully
10 imported, and so that's a place where the guidelines are
11 structured to actually look for an actual importation as
12 opposed to this one which does not require that act.

13 So for all those reasons, we think your Honor has
14 ruled correctly in the past and should rule again in this case
15 that the enhancement applies.

16 THE COURT: I find that the enhancement applies.
17 Again, the word "involving" has expansive connotations and I
18 think it must be construed as extending the focus of that
19 section beyond just those particular crimes that are listed
20 there because it does use the word involved or some form of the
21 word involved there. And I think that expansive reading of it
22 is appropriate and I find support in the Supreme Court's
23 analysis in *Taylor*, which contrasted definitions using the word
24 involving with definitions that did not include that word. So
25 I do find that that enhancement does in fact apply.

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1 Next objection for the role in the offense. And,
2 again, I guess I need to add as part of that enhancement
3 applying, it's also necessary to find that the mitigating role
4 adjustment is not appropriate. Let me just hear from defense
5 counsel, is there anything else you want to add regarding
6 mitigating role here? I know that you take the position that
7 he should be considered a minor participant and that the
8 aggravating role should not apply. Is there anything else you
9 want to add regarding role here in terms of mitigating role
10 here?

11 MR. MAHER: I guess it really doesn't matter how we
12 parse it -- it's the same argument. Really understanding what
13 Mr. Stammers' role is is the same factual discussion by me
14 either way your Honor wants to look at it. So I can discuss it
15 now and it would carry over to whether it's aggravating or not
16 based on how you assess what that is.

17 THE COURT: Well, those distinctions do actually make
18 somewhat of a difference. Obviously, if you're looking for a
19 mitigating role, that would be your burden for that sort of
20 mitigating role to get that. It's the government's burden for
21 the enhancement, for the enhanced role as a manager.

22 I'll let you know what my thinking is based on what
23 I've seen in the presentence report. It seems to me that a
24 minor role is not appropriate. I'm not sure if a managerial
25 role is appropriate, but it seems pretty clear that he's not a

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1 minor participant. I understand your argument that there was
2 someone else above him who was directing him, but that
3 certainly doesn't make him a minor participant.

4 But if you prefer, let's just talk about his role now.
5 And I just want to make sure we understand that I'm clear that
6 I understand that the burdens are different depending on which
7 way we're going here. In terms of asking for a mitigating
8 role, that's your burden. For the aggravating role, that's the
9 government's burden.

10 MR. MAHER: Exactly. I wasn't suggesting in any way
11 conflating those. I was merely discussing the best way just to
12 talk about these issues.

13 THE COURT: Okay. Go ahead, counsel.

14 MR. MAHER: This has been in many ways a very
15 difficult case to defend and one of the difficulties has really
16 been really understanding what it was about and it's something
17 that your Honor knows that we've grappled with as we've gone
18 through extensive discovery and had the time that your Honor
19 granted us to go through this and the supplemental discovery
20 requests that I've made to get more information, particularly
21 about Paul Le Roux, who was the government's cooperating
22 witness in this case. And now as we get towards the
23 culmination of everything, I think the lens has revealed things
24 much clearer as to what the quote/unquote organization is that
25 the government has been talking about for all of these months.

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1 The government talks about the organization and they
2 raised it again in their surreply yesterday. I submit that
3 there was no organization per se. What you have is you have a
4 brilliant murderous manipulator, Paul Le Roux, who has for
5 years now been engineering and overseeing his own wave of crime
6 across the globe. And it is breathtaking the scope of the
7 activities that Le Roux has been involved in ranging from
8 arming militias in Somalia to potential land grabs in Zimbabwe
9 to vast pharmaceutical drug importation or sales schemes in the
10 United States and Israel to what we know now from the sealed
11 information which has now been confirmed on March 19 of this
12 year, just about a month and a half ago, it looks like the
13 government unsealed the information that Mr. Le Roux has
14 pleaded guilty to. And in that it appears that he has pleaded
15 guilty to a count that incorporates the facts of his
16 involvement in five murders and two more conspiracy to commit
17 murders.

18 So there is an aspect of this case which I think can't
19 be discounted that Paul Le Roux was in charge of everything and
20 he highly compartmentalized what people did and knew. You can
21 see that just from looking at the discovery and the indictments
22 in these various cases that the government helped orchestrate.
23 They had the meetings with the Hunter group in the same place
24 in a different country and Mr. Stammers had no idea that that
25 was even going on, just like Mr. Stammers has never met Tan Lim

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1 or never met Peralta. It was highly compartmentalized by Le
2 Roux.

3 And Le Roux made it known to people once they got
4 within his orbit that he did not brook dissent and that any
5 type of double dealing or anything that didn't go his way could
6 be met with death. And we're not raising that as a defense.
7 Mr. Stammers has openly pleaded guilty to the counts. There's
8 been no plea agreement. There's been no cooperation. It's one
9 man acknowledging his mistake and his criminal activity that he
10 did agree to help Le Roux with the hundred kilogram meth
11 potential sale and distribution, though Mr. Stammers was not
12 involved in the sale aspect, merely the transportation and some
13 part of the safeguarding of it.

14 But Mr. Stammers' role in all this was really, and I
15 don't want to use this too pejoratively, but almost as an
16 errand boy for Le Roux. Le Roux gave specific instructions to
17 Mr. Stammers about how he wanted something done. Mr. Stammers
18 was not a part of some large organization where he had a crew
19 working under him that was part of some criminal conspiracy.
20 We've seen how the U.S. Attorney's Office when they take down
21 the mob or a faction of the mob, they'll have their
22 organizational chart and they'll have their mafia leader at the
23 top and then they'll have their capos and their soldiers and
24 have their big display of all these members and this clear
25 delineation of authority. There's been none of that in this

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1 case and it's clear why -- because there was none.

2 There was Le Roux at the top, who the government has
3 denied and denied. And then he had in this case for this
4 indictment four other people who were working in two groups in
5 isolation, basically, from each other, except for when Le Roux
6 had them contacting each other.

7 Mr. Stammers and Mr. Shackels, who if anything were
8 coequals under Le Roux, were on their aspect of things, and Tan
9 Lim and Peralta were on their aspect of things and that was it.
10 Anything that Mr. Stammers said he was going to do as far as
11 logistics was contacting regular people to organize things. It
12 was not that he was directing criminal surrogates of Le Roux to
13 carry out the criminal activity directed by an organization.
14 So I think that that goes not only to the minor role. When you
15 look at Le Roux's totality of his criminal behavior, Scott
16 Stammers' assistance to Le Roux is very, very, very small, very
17 small indeed. So that is the crux of our minor role.

18 But transitioning to the managerial aspect or
19 supervisory, I think it just flies in the face of the
20 guidelines to ascribe that type of level of authority and
21 decision-making to Mr. Stammers. He simply didn't have it.
22 Anything that had any type of real decision-making had to be
23 run through Le Roux and with the caveat that if it wasn't done
24 that way properly, there was always in the back of one's mind
25 what could happen, who could disappear -- yourself, a family

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1 member, who else -- if it didn't get carried out.

2 And we have not raised a specific motion about this,
3 but I think it's a factor to take into account at sentencing,
4 the government's use of Le Roux in this context, a man who is
5 known to people close to him as assassinating people who don't
6 carry out his orders, as someone that the government then is
7 using to direct people to conduct criminal activity. That's a
8 very different thing than if the government came across
9 Mr. Stammers, who is with an organized group of people and they
10 were involved in a long running operation to import
11 methamphetamine into the United States, which Mr. Stammers had
12 never, he never had any contact with importing any type of
13 drugs into the United States until Le Roux, working for the
14 government, suggested it and then directed it.

15 So that's not, again, to in any way limit
16 Mr. Stammers' full acknowledgment of guilt. He agreed to it
17 and he knows that it's a mistake and I'll talk about that when
18 we address the 3553 factors, but I think it is a reality of
19 this case that needs to be acknowledged.

20 In a nutshell, those are my arguments as far as
21 Mr. Stammers' role. Mr. Stammers had a legitimate job with a
22 legitimate security firm. He was approached by Dave Smith,
23 okay. It wasn't that Mr. Stammers had an illegal job that was
24 working on behalf of Mr. Le Roux. Mr. Stammers was basically
25 recruited by a man named Dave Smith to start getting involved

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1 in activity that was outside of his normal scope of employment.
2 Dave Smith was the go-between between Mr. Stammers and Mr. Le
3 Roux until one day Dave Smith disappeared, and now we believe
4 that he disappeared under direction of Paul Le Roux that he be
5 murdered. At that point, Mr. Stammers began to have direct,
6 without Mr. Smith filtering or being present, having direct
7 contact with Le Roux. So that was the nature of his contact
8 with Le Roux and how he got to be brought into this.

9 THE COURT: Okay. I have a few questions then.
10 What's important in 3B1.1 and 3B1.2 is a comparison between
11 Mr. Stammers and another or other participants. So for 3B1.2,
12 for the mitigating role adjustment that you're seeking, in the
13 application notes, application note 3A indicates that this
14 section provides a range of adjustments for a defendant who
15 plays a part in committing the offense that makes him
16 substantially less culpable than the average participant in the
17 criminal activity.

18 Your arguments imply to me that what you are saying is
19 that this organization didn't have a multilayered hierarchy,
20 that essentially there was Mr. Le Roux at the top and then
21 everyone else was sort of on the same plane below him, and if
22 that is the case, if that is your argument, then that does not
23 make Mr. Stammers substantially less culpable than the average
24 participant. Your argument makes him the average participant.
25 The way I'm listening to your argument is that Mr. Le Roux is

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1 the super participant and everyone else is below him on the
2 same level, and if that's the case, it seems to me that the
3 mitigating role adjustment cannot apply in that situation.

4 MR. MAHER: That's not exactly my argument, but I
5 think it still could even with what you're outlining there,
6 your Honor, if the criminal activity is really generated by Le
7 Roux and what he's basically doing is outsourcing specific acts
8 that he wants done to specific people, okay -- Mr. Stammers had
9 nothing to do with Tan Lim, nothing. One can argue that Tan
10 Lim's role when one looks at this was substantially higher than
11 Mr. Stammers. Tan Lim was the one who it appears from the
12 discovery that he was posturing that he could get the hundred
13 kilograms of pure methamphetamine from North Korea.

14 THE COURT: Before you go on, just so I'm clear and
15 we're working on the same page here, a participant for 3B1.1
16 and 3B1.2 does not need to be someone who was convicted of the
17 crime. I'm not certain if he actually needs to be someone who
18 was listed in the indictment. I don't believe that's
19 necessary. He just has to be a participant in the criminal
20 activity.

21 Now, we need to -- you're identifying people who have
22 been convicted of this crime. You're identifying other folks.
23 That's fine. But in terms of the average participant in this
24 criminal activity, in this organization, how is it that
25 Mr. Stammers is substantially less culpable than the average

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1 participant?

2 MR. MAHER: Who is an average person? We have no
3 organizational chart. It's an analysis that kind of falls
4 apart in this situation because, again, Mr. Le Roux is
5 basically hand picking people around the globe and he's got
6 legitimate businesses where he has people running what look
7 like legitimate businesses. And then he has some that were
8 illegitimate. Then he's got a lot of gray in between and
9 there's people that he recruits and that he doesn't.

10 That's why I started talking about how broad it is.
11 If you're looking at the criminal enterprise or organization,
12 on one hand you could say you have Le Roux and you have
13 something going all the way back to his operations in Somalia,
14 all right. And if you look at from Somalia to Israel to Brazil
15 to Colombia to Thailand to the Philippines, Mr. Stammers
16 absolutely is microscopic compared to the average participant
17 in all of that. Mr. Stammers was not studying up
18 hallucinogenic drug chemical laboratories in Somalia. He
19 wasn't doing anything like that.

20 It depends on the scope as you want to look at this.
21 If you want to drill down to just this indictment and people
22 who were involved in this indictment, it's important to note
23 that nothing happened. There was no importation. And most
24 likely there never was any methamphetamine ever made in North
25 Korea that was ever going to be distributed in this case, none.

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1 It was purely an idea of the government to put the carrot out
2 there and to use Le Roux to help make sure that the carrot got
3 bit.

4 So if you look at Mr. Stammers in comparison to Tan
5 Lim, you can make the argument that his purported role in this
6 conspiracy was much less than Tan Lim's because he had no
7 involvement in the production or the sale back and forth of
8 large quantities of methamphetamine like Tan Lim. He wasn't a
9 part of any Hong Kong network, okay, which the government seems
10 to be delineating apart from "the organization of Le Roux." So
11 as far as that, I think he's much less culpable and that is
12 enough to say that he should be worthy of minor role.

13 THE COURT: Okay. Since you suggested we talk about
14 role at one time, let's do that. Let me hear you about
15 aggravating role. And also let me just, again, I've read the
16 submissions. I think I understand your position regarding
17 aggravated role, but I want to make sure I alert you to 3B1.1,
18 aggravating role. The application notes, application note 2,
19 says that to qualify for an adjustment under this section, the
20 defendant must have been the organizer, leader, manager, or
21 supervisor of one or more other participants. Then that next
22 sentence says, an upward departure may be warranted, however,
23 in the case of a defendant who did not organize, lead, manage,
24 or supervise another participant, but who nevertheless
25 exercised management responsibility over the property, assets,

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1 or activities of a criminal organization.

2 So I just want to make sure that you're aware of that.
3 It seems that that might apply. I'm not saying that it does or
4 doesn't, that upward departure that's listed in the application
5 note. But I have an obligation under Second Circuit precedent
6 to let you know that I am contemplating that. I haven't
7 decided whether that applies, but I'm contemplating potentially
8 that upward departure.

9 So now that I've let you know that, I also have an
10 obligation to give you an opportunity if you'd like to seek an
11 adjournment for either side if you want an adjournment to think
12 about that some more.

13 So, counsel, do you want an adjournment to consider
14 that?

15 MR. MAHER: May I have a moment to talk with
16 Mr. Stammers?

17 THE COURT: Sure.

18 (Defendant and counsel conferring)

19 MR. MAHER: We're ready to proceed, your Honor. I've
20 discussed it with Mr. Stammers, and he would like to continue.

21 THE COURT: Okay. So, Mr. Stammers, you'd like to
22 continue?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Counsel for the government, would you like
25 an adjournment to consider this contemplated upward departure?

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1 MR. BOVE: No, your Honor. We're prepared to proceed.

2 THE COURT: So I just wanted to alert counsel of that.

3 Let me hear from defense counsel regarding the aggravating role
4 adjustment. I will share with you I am, again, what's
5 necessary for 3B1.1 and 3B1.2 is identifying participants. For
6 the 3B1.2, it's necessary to try to get a sense of the average
7 participant. For 3B1.1, it's necessary to be able to identify
8 a participant that Mr. Stammers was potentially managing in
9 this case, and I'm not sure whether that has been done. I am
10 inclined not to give the enhancement for aggravating role
11 because I'm not sure. I'll hear from the government more on
12 that. Obviously, that's their burden in terms of which
13 participant is being managed in this case. And, again, the
14 participant doesn't have to be someone who has been convicted
15 of this crime.

16 But go ahead, counsel. Let me hear from you or should
17 I turn to the government now regarding the aggravating role
18 adjustment since that's their burden?

19 MR. MAHER: I prefer that.

20 THE COURT: Okay. Let me hear from the government
21 regarding, first, let me give the government a chance to
22 respond to what defense counsel has said about the minor role
23 adjustment.

24 MR. BOVE: Judge, I think it's all appropriately
25 wrapped up into one piece at this point because our position is

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1 that the aggravating role adjustment, the three-level
2 adjustment is appropriate, although we take your point. In the
3 alternative, it may be the case that an upward departure is
4 appropriate.

5 Judge, there was an organization in this case. There
6 was methamphetamine in this case, and this defendant managed
7 that organization. Let me start with the first point.

8 However criminally culpable Paul Le Roux is, and
9 counsel has gone to great lengths today to describe that,
10 that's not a mitigating feature for the man sitting behind me
11 because this is one of his right-hand men, one of his principal
12 managers, somebody who is tasked with running day-to-day
13 operations on the ground for, among other things, which I think
14 we'll get to when we talk about the 3553 factors, the
15 methamphetamine shipment in question.

16 The defendant in this case, I think one of the unique
17 features is that most of the most relevant incriminating
18 evidence are literally his email communications. Your Honor
19 can see in his own words exactly how he was managing the
20 organization and that the organization did in fact have a
21 structure.

22 Your Honor has seen from our submission the defendant
23 referred to the organization's "banker boys." He's referred to
24 the couriers. The defendant literally wrote the operational
25 plan for this methamphetamine shipment that's at issue in the

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1 conspiracy conviction and that's attached to our submission as
2 Government Exhibit C. And here on page 2, it refers to a
3 covert counterambush team. That's another part of the
4 structure of this organization. Another feature is Valkovic,
5 the codefendant in this case, who brought to the table a
6 motorcycle gang providing security in this case.

7 So there was an organization. The defendant has been
8 caught in his own words on email referring to the company. And
9 the defendant was the one managing it for Paul Le Roux before
10 Paul Le Roux was arrested and after Paul Le Roux was arrested
11 in this case.

12 As I said, and this is in response to one of counsel's
13 points about whether or not there was methamphetamine at issue
14 to be managed, there are literally photographs of that
15 methamphetamine in our submission at I believe pages 8 and 14.
16 There were the kilograms that were seized, and then there's the
17 samples that were sent. And this defendant, your Honor, was
18 responsible for managing both the stash that was seized and for
19 managing the samples that were sent in furtherance of the
20 100 kilo transaction.

21 Now, I think getting to your Honor's point about
22 whether the defendant had managerial responsibility, and if so,
23 who was a participant that he managed, your Honor can see from,
24 again, his email communications, including the one that's
25 attached as Exhibit B, there was a ground commander that the

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1 defendant managed. There was a political asset that the
2 defendant managed. We argue that the defendant was also
3 responsible for managing and exercising discretion over not
4 only Valkovic, but certainly the I'll call them foot soldiers
5 or other security members that Valkovic was to provide in
6 furtherance of this shipment.

7 So in all of those respects, your Honor, I think
8 there's an ample basis for finding that there were people that
9 he managed. How did he manage them, your Honor? Your Honor
10 can see, again, from the emails in the submission he talks
11 about having negotiated -- that's his word -- a downward price
12 adjustment for the transportation of the methamphetamine.

13 And, again, because I think it does bear repeating
14 with respect to whether or not he's exercising discretion and
15 how he's operating this, he sends Mr. Le Roux a series of
16 questions that illustrate that he's thinking carefully about
17 how to conduct this crime in a sophisticated way. That's
18 Government Exhibit B to the memorandum. And then, again, he
19 designs the op plan. And the op plan -- I know your Honor has
20 reviewed it -- is sophisticated and it reflects, again, careful
21 thought and coordination with a number of people who were going
22 to be responsible for the logistical operations when the
23 methamphetamine got there.

24 I'll close by saying that even in counsel's
25 presentation, and I understand it was with respect to the

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1 mitigating role adjustment, he used verbs like organized. The
2 defendant organized, Mr. Le Roux outsourced his projects. We
3 agree with that terminology. That's what the defendant did
4 here. He organized a team to receive and distribute a 100
5 kilogram shipment of methamphetamine that he understood was
6 going to be imported into the United States. He did that by
7 directing a number of people. And so we feel that the
8 three level adjustment is appropriate, and if not that, your
9 Honor, certainly both an upward departure on the basis your
10 Honor has described, as well as aggravating considerations
11 under 3553 should all be taken into account.

12 THE COURT: Okay. And what about the fact that from
13 what I've seen in the presentence report, it's certainly
14 implied that Mr. Stammers was involved with Mr. Le Roux prior
15 to Mr. Le Roux's association with law enforcement in this case.
16 How is it that I should discern whether or not these
17 individuals who he's communicating with and speaking to -- at
18 one point in your submission you said he was recruiting
19 individuals to participate in this activity. How am I to
20 discern since Mr. Stammers was involved with Mr. Le Roux before
21 his association with the government whether or not these are
22 individuals that Mr. Stammers had recruited and was sort of
23 managing sort of interdependently with Mr. Le Roux as opposed
24 to longer standing members of this organization or longer
25 standing people who were affiliated with Mr. Le Roux who might

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1 have been more in a cooperative situation with Mr. Stammers as
2 opposed to sort of Mr. Stammers managing them and these people
3 perhaps being very eager and perhaps maybe reaching out to Le
4 Roux to reach out through him. Tell me more about that.

5 MR. BOVE: Your Honor, for the recruitment point,
6 these are the emails that we highlighted from late 2012. It's
7 frankly not clear to us exactly when Mr. Stammers is referring
8 to this North Korean asset that we're referring to on page 5 of
9 our submission. Certainly the fact that this person needs to
10 be vetted and the last line of the email says, please let me
11 know once vetting has been completed, illustrates to us, the
12 government, that even in October of 2012, Mr. Stammers was
13 working to recruit other people on behalf of the organization.

14 But I think more directly to your Honor's point,
15 whether or not there were people who were preexisting members
16 of the organization, they were recruited by Mr. Stammers to
17 participate in this specific shipment. Your Honor can see from
18 the email traffic that there were a number of pending ventures,
19 both drug trafficking and weapons related, and what
20 Mr. Stammers did here was identify a series of people who in
21 turn had employees working for them who could facilitate the
22 maritime receipt of this load and then the transportation of it
23 once it arrived.

24 And I think to maybe put a finer point on it by way of
25 example, your Honor, the email communications about the

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1 political asset illustrate that initially Mr. Stammers wasn't
2 sure who exactly that was going to be. And ultimately by the
3 end of it, it sounds from these emails like he had identified
4 that person because he refers to having actually met with them.
5 So that is one example of a person, we submit, who was directly
6 recruited by Mr. Stammers to facilitate this particular
7 offense.

8 THE COURT: Okay. And let me hear from you a little
9 bit more regarding the potential upward departure because it
10 does seem to me based on what I've seen that even if
11 Mr. Stammers didn't organize, lead, manage, or supervise
12 another participant, he has exercised management responsibility
13 over the property or assets of this criminal organization since
14 he seemed to be in charge of storing large quantities of the
15 drugs involved in this case. Anything to add on that?

16 MR. BOVE: I think your Honor is correct in drawing
17 that inference. There's an email in our submission that
18 illustrates that Mr. Stammers actually identified to Le Roux
19 the FedEx shipments that were used to transmit the samples.
20 That's one aspect of the property that I think almost
21 undisputedly or certainly not subject to reasonable dispute
22 that Mr. Stammers managed. But, again, the government's
23 position is that those larger seizures of methamphetamine were
24 also part of the property of the organization, the contraband
25 that Mr. Stammers helped to manage. And I think you can also

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1 see he's talking about managing the finances when he refers to
2 the banker boys and the transfers to avoid links to company
3 personnel. So I think there's, as your Honor is suggesting
4 here, an ample basis for certainly that departure, the upward
5 departure.

6 But I do believe there is a basis here for a finding
7 that there are specific participants, including Valkovic,
8 including the people under Valkovic, including the ground
9 commander referenced in the evidence, as well as the political
10 asset, and also this covert counterambush team, all of whom
11 Mr. Stammers took on the responsibility of both identifying for
12 support of this operation and then carrying it out. And the
13 man at the table here behind me was managing all of that,
14 however culpable Paul Le Roux was in this.

15 THE COURT: Okay. Thank you. Let me hear from
16 defense counsel now.

17 MR. MAHER: From my perspective, this is an ongoing
18 problem with the reliability of what the government asserts
19 throughout this case. The government again brings up the
20 ground commander, all right. We discovered in the
21 submission -- and I filed this letter two days ago -- that the
22 government cut and pasted an email to make it look -- and I'm
23 not saying they intentionally did it at this point, but they
24 cut and pasted an email that was then interpreted by the
25 government that Mr. Shackels gave directives about this ground

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1 commander.

2 And the defense found the original discovery page. We
3 provided it to the Court. It's in our submission. And it's
4 clear from that page, it's unfathomable how any lawyer could
5 look at that page and cut and paste and then make the arguments
6 that the government made. It's unfathomable. And, again, I'm
7 not suggesting that it was intentional. But to miss something
8 that big is troubling. And I think that that goes to the
9 reliability of what the government is trying to present here
10 about Mr. Stammers.

11 The government just now talked about all of these
12 different crews. Let's name one, name one. How can the
13 government show that this isn't bluster on Mr. Stammers' part,
14 that there was ever going to be any actual transportation at
15 all? There's not one quote/unquote banker boy that the
16 government has one email from Mr. Stammers, one phone call, one
17 surveillance photo, nothing, no contact that Mr. Stammers has
18 with some type of banker boy or courier, none, because they
19 didn't exist.

20 There is no covert ambush team to speak of. Sure,
21 it's in a piece of paper. Does that mean it actually existed
22 or there are actual people? No. The government does not have
23 one email, one phone call, one wiretap, one photograph,
24 anything of anyone of some supposed covert ambush team because
25 it doesn't exist. There was none.

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1 There were no people that Mr. Stammers is pulling the
2 strings of as the government is suggesting right now. And it's
3 because the government is trying to piece together emails which
4 have ambiguous terms and also have puffery involved to try to
5 then inflate Mr. Stammers' role. And it's been done explicitly
6 in the wrong way, like I suggested how they cut and pasted an
7 email, right, to more subtle how the government views things
8 where a reasonable person could absolutely not agree with the
9 government's take on things.

10 And if it's their burden now, the government utterly
11 fails to show that Mr. Stammers was supervising and managing
12 people to the extent that he deserves any type of aggravating
13 role assessment or upward departure. And the upward departure
14 is clear. In the beginning of the sentence it says the Court
15 may. This is not a mandatory provision. This is a may. And I
16 don't think that the totality of the facts here are one that
17 should persuade the Court to invoke that type of discretion
18 here.

19 The government brings up that there was
20 methamphetamine in this case and they bring up the 30 kilogram
21 shipment. And Mr. Stammers, and I have been clear, was not
22 involved in that 30 kilogram shipment. He was not. And there
23 is a division between Mr. Shackels and Mr. Stammers regarding
24 that. Mr. Stammers was not involved in bringing that 30
25 kilogram shipment. He didn't find out about it until after it

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1 was seized by the authorities. That's when he was basically
2 recruited to help do damage control about it, but that was not
3 his baby, okay, not at all. And the government has been trying
4 to portray this picture that Mr. Stammers was involved in that
5 and he wasn't.

6 Likewise with the sample, the 2 gram sample of
7 methamphetamine, that was not organized by Mr. Stammers. He
8 came to have knowledge of it, but he was not organizing that.

9 And the tracking number, that email tracking number,
10 the email that contains the tracking number that the government
11 is trying to get mileage out of, that was directed from Le
12 Roux, get me the tracking number. And the reason Le Roux sent
13 that email to Mr. Stammers was because Shackels was in charge
14 of that and Le Roux was trying to get Shackels to type
15 something up, a response that he could then forward to his FBI
16 or DEA handler about this. Shackels was not responding to Le
17 Roux quick enough and so that's why Le Roux then got on
18 Mr. Stammers, I need the tracking number, get it for me. So
19 Mr. Stammers, because he's being directed by Le Roux, asks
20 Shackels, hey, what's this tracking number boss wants and then
21 forwards it. That's this email about the tracking number.

22 This does not indicate that Mr. Stammers was the
23 mastermind behind the importation and the dry run. It is what
24 it is. Mr. Stammers was working at Le Roux's behest, but was
25 not in charge of that aspect and was not managing Phil

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1 Shackels. He was not managing Valkovic. Okay.

2 The bottom line, it's just not right. It's just not
3 right to ascribe this to Mr. Stammers. The government talks
4 about negotiating deals and the example that they give is
5 Mr. Stammers saying that he negotiated a drop in price. Well,
6 darn, I mean that's a lot of discretion to get a better price
7 for your boss who might assassinate you if you do the wrong
8 thing. There's nothing to suggest that Mr. Stammers said, hey,
9 boss, I know you said you'd only spend \$10 million on this. I
10 just agreed that you'd spend 20 million on it.

11 THE COURT: Okay. Let me do this. Let me let the
12 parties know what my thinking is. I am at this point not
13 inclined to grant the mitigating role adjustment that the
14 defense is requesting, nor am I inclined to grant the
15 aggravating role adjustment that the government is requesting.
16 I have not yet decided about upward departure yet because I
17 first need to -- I am required to determine the guideline range
18 first that applies before I look to any departures upward,
19 downward, or any of the other factors in 3553(a).

20 That's where I'm leaning. But both sides have an
21 opportunity, if you wish, we can have a sentencing hearing
22 about that. Does either side request a Fatico or other styled
23 sentencing hearing in this case to address these issues or
24 anything else, an evidentiary hearing? Let me hear from the
25 defense. Do you seek one?

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1 (Defendant and counsel conferring)

2 MR. MAHER: Your Honor, Mr. Stammers is prepared to go
3 forward today. And we're prepared for your Honor to make the
4 appropriate decision about this, but our position is very clear
5 that he was not involved in that 30 kilograms.

6 THE COURT: Okay.

7 MR. MAHER: As far as, if I could just finish the last
8 sentence of my negotiation argument that I was making, that
9 Mr. Stammers was not authorized to do anything beyond the
10 bounds that Le Roux directed him to. To actually show
11 independence in negotiating, he didn't have that.

12 THE COURT: Okay. So just to be clear, you do not
13 seek any sort of evidentiary hearing.

14 MR. MAHER: That's correct.

15 THE COURT: Okay. Government.

16 MR. BOVE: The government is not seeking an
17 evidentiary hearing either, your Honor. We believe that the
18 defendant's statements as summarized in the submission and at
19 times quoted speak for themselves.

20 I'm frankly a little confused. On the one hand, I
21 hear Mr. Maher saying that the defendant now should not be
22 taken at his word, that some of these emails are puffery, that
23 this is not enough to prove that he actually did these things.
24 But on the other hand, I hear Mr. Maher saying that Paul Le
25 Roux was such a dangerous, violent individual that of course

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1 Mr. Stammers would do whatever he said.

2 And so it's doubtful to say the least that a man who
3 crafted the operational plan that your Honor has now read to
4 receive this shipment actually didn't do any of those things to
5 coordinate the receipt of that shipment and intended to just
6 dump those drugs in the ocean when they arrived at the intended
7 location because he certainly understood that they were coming,
8 which is clear from his guilty plea in this case.

9 THE COURT: Thank you.

10 MR. MAHER: I just want to say that's the crux of the
11 government's argument -- we think so. That's it. We think so.
12 No proof, just we think so.

13 THE COURT: Okay. I am not going to grant the defense
14 request for a mitigating role. So, again, under paragraph 71,
15 that special offense characteristic pursuant to 2D1.1(b)(5),
16 two-level enhancement does in fact apply because Mr. Stammers
17 is not subject to an adjustment under 3B1.2.

18 Under paragraph 73, the adjustment for role in the
19 offense, I will not apply that adjustment that the government
20 has sought and it's listed in the presentence report.

21 So we are at a base offense level of 38, with an
22 additional two points pursuant to 2D1.1(b)(5), which gives us
23 an adjusted offense level of 40, minus three points for
24 acceptance of responsibility under paragraph 77 and 78
25 combined, which takes us to a total offense level of 37.

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1 I don't believe there are any other objections by
2 either side to any of the guideline calculation, is that
3 correct, defense counsel?

4 MR. MAHER: Nothing further, no.

5 THE COURT: Is that correct, counsel for the
6 government?

7 MR. BOVE: That's correct, Judge.

8 THE COURT: Other than what's already been stated, is
9 there any objection to my guideline calculation from the
10 defense or the government?

11 MR. MAHER: None that I have not already otherwise
12 raised.

13 MR. BOVE: No, your Honor.

14 THE COURT: All right. So I find that the total
15 offense level is 37, and both sides are in agreement that
16 Mr. Stammers is in criminal history category I, which gives us
17 a guideline range of 210 to 262 months.

18 I will now hear from the parties regarding any other
19 issues they wish to raise about the appropriate sentence in
20 this case starting with counsel for the defense.

21 MR. MAHER: Thank you, your Honor. I just have a
22 second of two just to set up here.

23 Thank you, your Honor. I'm ready if you are.

24 THE COURT: Okay.

25 MR. MAHER: And I take it I can address the 3553

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1 factors at this point.

2 THE COURT: Yes. Anything relevant to sentencing at
3 this point, yes. I've already determined the guideline range,
4 so, yes, the 3553 factors, any request for a downward departure
5 or the like.

6 MR. MAHER: Thank you.

7 THE COURT: Or any further things you want to say
8 about my notice of the upward departure as well, but I think
9 we've already heard all of that. Whatever you wish to raise,
10 counsel, go ahead.

11 MR. MAHER: I appreciate the opportunity. Thank you,
12 your Honor.

13 This is a sad day for Mr. Stammers, but in other ways,
14 it's also I think a hopeful day for Mr. Stammers. In our
15 sentencing memorandum, I described Mr. Stammers' life history,
16 I believe, and I am not going to go into the detail that I did
17 in my written submission in public and part of that is because
18 Mr. Stammers is a very reserved, private person, particularly
19 when it comes to his family.

20 But I think one thing is clear from the information
21 that the Court has before you is that Mr. Stammers' childhood
22 was difficult. To be a nine-year-old boy and basically have to
23 decide which parent you choose and your sister being given the
24 same decision and then a unit of four being divided down the
25 middle is tragic and that has reverberated throughout

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1 Mr. Stammers' life and it's reverberated through his ability
2 and inability for many years to have a stable relationship with
3 another person, to his use of substances in order to mitigate
4 feelings of hurt and emptiness that he has had.

5 Mr. Stammers was basically, as you know, raised by his
6 father, living in Hong Kong. His father had a good job but
7 that relative wealth compared to the people that lived in that
8 country that Mr. Stammers had did not give Mr. Stammers the
9 support, the parental support that he needed. He was basically
10 raised by a maid, as is verified by the letters that you
11 received, and that was difficult. Mr. Stammers' love and
12 protectiveness for his father is I think extraordinary and it
13 has been verified with the discussion that I've had with his
14 family and the letters that your Honor has seen. It was tough.
15 It was very tough for Mr. Stammers growing up.

16 He didn't make it through high school. Knowing what I
17 know of Mr. Stammers and knowing his dignity and his work ethic
18 and just who he is, I'm convinced it is a product of his at
19 that point undiagnosed ADHD because Mr. Stammers did throw
20 himself into work and has worked hard and he has had for most
21 of his life a legitimate livelihood, but one that has not had
22 further tragic outcomes for him.

23 His first marriage broke apart and it resulted in
24 basically his oldest child being raised by his father and
25 stepmother under the guise that she wasn't his daughter, that

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1 they were brother and sister. What emotional effect that can
2 have on someone can be pretty difficult for someone who doesn't
3 go through that to really get in tune with that. And it goes
4 from there.

5 Mr. Stammers, I'd say the loss of his father had a
6 profound effect. When he was at the death bed of his father
7 holding his hand, that just put Mr. Stammers in a place where
8 people couldn't reach him for a number of years, and it led him
9 also I think to not be able to reach himself and who he is.
10 And I think that led Mr. Stammers to a psychological place
11 where then he could be open to making the decisions that he
12 has.

13 And by no means is Mr. Stammers trying to deny his
14 guilt at all. He is very up-front. He agreed to help Le Roux
15 do this. But knowing the quality of Mr. Stammers' character,
16 which I think I have an idea. I've known him now over two
17 years. He is a man who does garner respect, I think. He
18 conducts himself in a way that's worthy of respect. And that
19 doesn't mean that everything he's done is perfect -- far from
20 it. But I'm going to be the last to point out an infallible
21 person that I can find on this planet.

22 I know the government is going to retort, sure, people
23 make mistakes, but look at the decision that Mr. Stammers made
24 is tremendous and it was and it's horrendous. But, you know
25 what, Mr. Stammers is paying for it basically for the rest of

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1 his life. He spent two months in a Thai prison in a cell
2 cramped with other people with a hole in the floor, insects, to
3 then being brought to the MCC where he's been ever since. So
4 that's round one of the wake-up call that has occurred to
5 Mr. Stammers.

6 And Mr. Stammers had a number and has had a number of
7 ways to react to that. The way that he has reacted considering
8 what he has been facing I think has been nothing less than
9 exemplary. He has turned to his family and reengaged himself
10 with his mother, with his sister, and most importantly his
11 daughter, and that is something that is the hopeful part of
12 this process that I mentioned earlier is that Mr. Stammers
13 understands what led to his behavior. He understands the
14 severity of the wrongness of his decision. And he appreciates
15 the harm that he has caused not just to himself, but to the
16 people that he loves most on this planet and that is something
17 that he takes to bed with him every night. It's something that
18 he thinks about.

19 He has given me permission to also disclose to the
20 Court, which I have, that he does suffer from depression and is
21 receiving medication for that. And it's been emotionally
22 devastating for him. But he's going to get through this, I
23 believe. And he has the support of his family, which a lot of
24 people at this point wouldn't have, and that's very important.

25 He is very fearful about the future of his daughter,

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1 how is she going to grow up where the soonest, no matter what
2 sentence your Honor wanted to give Mr. Stammers at this point,
3 there's no way that she'll see him a free man before her late
4 teenage years and that's the minimum. But there's a real
5 possibility that he couldn't see her if you follow the
6 guidelines until she's in her thirties. And the opportunities
7 that will be missed and can never be replicated, Mr. Stammers
8 feels that and thinks about it and is crushed by the weight of
9 that every waking moment at this point, your Honor, and I think
10 that's a sentence that no Court can inflict but one that
11 Mr. Stammers is willingly accepting because he realizes what
12 he's done and he's feeling it. And I think that is the most
13 important step to rehabilitation is that acknowledgment by the
14 person who is facing these types of situations.

15 I don't think in light of everything before the Court
16 that Mr. Stammers, first off, should receive any upward
17 departure. Again, that was a permissive rule that your Honor
18 could invoke if your Honor found the facts. I don't think that
19 your Honor has those facts before you to warrant any upward
20 departure in light of the arguments I made before and the
21 arguments I've making now and everything else that's before the
22 Court; I don't think it's warranted.

23 I don't think a guidelines range is warranted
24 whatsoever the way it stands right now. Probation even agreed
25 with that. Their recommendation is in the 190-month plus

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1 range, which is still below the guidelines range. I would
2 submit that a sentence of 120 months is more than sufficient to
3 meet the needs and the aims of sentencing and justice in this
4 case.

5 In looking at the Hunter case, the case that's not
6 joined with this, but the men who your Honor knows who were
7 basically charged with conspiracy to murder on behalf of Paul
8 Le Roux, the defendants who have been sentenced in that case
9 have been sentenced to 96 months to 240 months and that's for
10 actually taking steps to murder people. Mr. Stammers stands
11 before you with a conviction, a criminal conviction for the
12 conspiracy to import drugs, non-violent, and with no allegation
13 that he used violence in any ways.

14 I do, just so it's clear, I object to the government's
15 invocation of facts regarding arms transactions in their memo.
16 There is nothing about the facts of the arms transactions in
17 the PSR, so I didn't raise any formal objection because none of
18 that is in the PSR. I don't believe it's properly before the
19 Court. There's nothing to suggest that the arms transactions
20 that were included in the government's memo actually were
21 illegal. As in the email cited by the government, the person
22 TC, who is negotiating for these weapons, said it was kosher,
23 meaning legitimate, and that he had back end user certificates,
24 meaning that although some people on this planet don't like
25 that arms are sold around the globe, it is a thriving

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1 legitimate business that drives economies around the world.
2 And there is just nothing hard proof at this point that
3 Mr. Stammers, with what the government has submitted, was
4 involved in illegal arms transactions that should weigh on the
5 Court here.

6 So in closing, your Honor, I beseech the Court to see
7 Mr. Stammers as the whole person that he is, to see all of his
8 actions, and to impose a sentence that is below the guidelines
9 that has already been calculated. Thank you.

10 THE COURT: Okay. Let me also give both sides notice
11 that I am contemplating a downward departure based on harsh
12 conditions of confinement for that time that Mr. Stammers spent
13 incarcerated in Thailand before he was extradited to the United
14 States.

15 Does either side wish an adjournment to think about
16 that, counsel for the defense, counsel for the government?

17 MR. MAHER: No.

18 MR. BOVE: No, your Honor.

19 THE COURT: Okay. I want to hear from the government
20 for a moment. Defense counsel, you raised something about
21 another matter, about the Hunter case, and you talked about
22 some defendants who have been sentenced in that case. Can you
23 just tell me more about what it is that you're getting at
24 there?

25 MR. MAHER: What I'm getting at is that a different

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1 group of people that were working under the direction of Mr. Le
2 Roux, working on behalf of the government, have pleaded guilty
3 to their role in that separate conspiracy that the government
4 says is separate -- it was all Paul Le Roux actually -- and
5 they have been sentenced to some of them to 240 months for
6 admitting that they were actually planning to kill people. And
7 so I think that there's -- and one person received 96 months.
8 I think they came in and did a safety valve proffer, but they
9 received 96 months.

10 So I'm just talking as far as trying to raise the
11 issue as far as sentence disparity that other people working
12 under the directive of Le Roux who were actually tasked with
13 killing people and agreed to do that received a sentence that
14 would, quote/unquote, be within the guideline range that
15 Mr. Stammers has right now. And I think that would be totally
16 unwarranted looking at the differences between these cases.

17 Thank you, your Honor.

18 THE COURT: Okay. I am tasked with the responsibility
19 of avoiding unwarranted sentencing disparities. I obviously
20 don't have that other case in front of me; I don't have much
21 information about that. It seems that I would need additional
22 information to determine whether or not these disparities that
23 counsel are speaking about are actually unwarranted or whether
24 those were warranted disparities. I don't know anything about
25 the facts of those cases or the facts of those defendants.

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1 So it may be that, well, I think I'm going to need
2 more information about that. We may need to adjourn sentence
3 so I can get that information if that's something defense
4 counsel wants to rely on, this claim that there might be
5 disparities in terms of the sentence if I were to sentence
6 Mr. Stammers within the guidelines which, again, are advisory.
7 I'm not required to sentence him within the guideline range.

8 Let me hear from the government on that and anything
9 else you wish to raise.

10 MR. BOVE: Judge, the defendants in the Hunter case --
11 and there are five of them -- are not at all similarly situated
12 to the defendant here and, therefore, from my perspective, it's
13 not necessary to conduct a hearing or provide time for further
14 submissions on that issue. The one defendant that has been
15 referenced here in the Hunter case, Michael Filter, who was
16 sentenced to 96 months, he was safety valve eligible,
17 obviously.

18 The narcotics related conduct in that case focused
19 principally on supervision, that is, providing effectively
20 ground security for a purported drug shipment that was of
21 cocaine that was supposed to go from the Bahamas to the United
22 States. It was basically a multiday operation relative to this
23 defendant's multimonth operation.

24 And I think most importantly, again, there was
25 actually methamphetamine in this case. The effect of the DEA

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1 sting in this case was to connect two sets of criminal
2 operators to provide an actual 100 kilo load of
3 methamphetamine. There was not actually drugs involved in the
4 Hunter case. That was in fact a sting involving cocaine. So I
5 don't think there's an adjournment necessary because I don't
6 think there's any merit to the argument that those defendants
7 in the case before Judge Swain are points of reference for your
8 Honor with respect to today's sentencing.

9 THE COURT: All right. Defense counsel.

10 MR. MAHER: I raise it, I raise it in regard to the
11 aspect of a sentence involving a crime of violence versus
12 crimes not involving violence. And we have the guidelines and
13 there are obviously some cases of nonviolent crimes that can
14 have much harsher sentences than crimes that involve violence.
15 My point of raising this is just more for the illustrative
16 point, your Honor, that the men who have pled guilty, again,
17 and it wasn't just drugs in that case. It was the conspiracy
18 to assassinate people that they pleaded guilty to as well.
19 Those people are getting 240 months.

20 And so for someone who has pleaded guilty to trying to
21 kill somebody, I think, and that can just be a general point of
22 reference that your Honor takes in every case as to what is an
23 appropriate sentence for the facts and the person before you.
24 I don't think we need to have an adjournment for your Honor to
25 just take what is really I think more of just a common sense

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1 notion into account.

2 THE COURT: Hold on a second.

3 MR. MAHER: I did provide that indictment as an
4 exhibit in my letter two days ago.

5 THE COURT: Okay. Hold on.

6 I understand Mr. Stammers probably wants to get this
7 behind him. I understand that defense counsel is not currently
8 seeking an adjournment. The government is not seeking an
9 adjournment. But since this issue was raised by defense
10 counsel and I have an independent obligation to consider all
11 the factors in 18 U.S.C. 3553 and I understand defense counsel
12 may be sort of modifying the argument now, the argument
13 initially was just this is a guideline range that would be
14 appropriate for someone who is convicted of some sort of
15 violent crime and that's one thing. But the fact that a
16 specific indictment was referenced and that there was a
17 reference to this individual being part of a conspiracy, albeit
18 a separate conspiracy and a different conspiracy involving
19 Mr. Le Roux, I think I have an independent obligation to look
20 at that, to get this information and look at it to make sure
21 that I do avoid any unwarranted sentencing disparities. So I
22 think we're going to need to adjourn this matter so that I can
23 get this information.

24 But I do think while everyone is here we can continue
25 with the other aspects of this sentencing hearing while

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1 everyone is here. Let me just find out from defense counsel, I
2 know Mr. Stammers is not a United States citizen. Is anyone
3 here in the audience for Mr. Stammers here today?

4 MR. MAHER: They were not able to travel.

5 THE COURT: All right. That's fine. Let me hear from
6 the government in response to the other points that defense
7 counsel has raised.

8 MR. BOVE: Thank you, your Honor. As is indicated in
9 the PSR in this case, the defendant reports no legitimate
10 employment after 2010, and that's because in 2010 and
11 thereafter, the defendant began to work with individuals who
12 were working with Paul Le Roux and eventually ascended to
13 become, as I've said earlier, Paul Le Roux's right-hand man at
14 least and especially with respect to the offense conduct that's
15 before your Honor. That conduct did involve weapons
16 trafficking. That conduct also involved methamphetamine
17 trafficking.

18 Defense counsel has raised an objection about our
19 argument -- and it is a factual one -- that the defendant was
20 involved in prior shipments of methamphetamine. We think the
21 record supports that conclusion, especially in the sentencing
22 context. On November 20 of 2012, after methamphetamine was
23 seized, the defendant writes to Mr. Le Roux, call Shackels,
24 it's urgent. A few days later he says he met with an
25 individual he referred to in the emails as BP to explain the,

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1 quote, stock delay. The government's position is that that
2 phrase is a reference to the methamphetamine that he was aware
3 of before it was seized, he was actually trying to broker a
4 transaction with this individual BP, and now he's telling BP
5 there's going to be a delay because the drugs are gone.

6 A few days later, the defendant reports that BP would
7 like to continue with the transaction when the new shipment is
8 available. I have reviewed the recordings in this case and one
9 in particular in January of 2013 where the defendant met with
10 confidential sources acting at the direction of the DEA. Those
11 confidential sources referenced prior shipments of
12 methamphetamine sourced from North Korea. They discussed how
13 purchasers in the United States were very pleased by the
14 quality of those drugs. And the defendant, while not going out
15 of his way, to be clear, to say yes, that was what we sent,
16 he's clearly familiar with the fact that this organization that
17 he works for has previously transmitted methamphetamine and
18 it's clear from his responses, which are basically affirmative
19 responses, yes, it's hard to get this, yes, it's hard to
20 transmit, that he's aware that this process has taken place and
21 that he's participated in it.

22 And, finally, and this is with respect to the point
23 about the defendant's prior drug trafficking conduct. In
24 Exhibit C, the operations plan, on page 3, under marina site
25 details and locations, he refers using code to "past visits."

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1 The government's position is that there the reference to past
2 visits is prior receipt of maritime shipments of drugs.

3 Now, I focused on methamphetamine, your Honor, but you
4 can see from the emails that are a part of our submission that
5 methamphetamine was just one aspect of the narcotics that the
6 defendant helped to distribute. He was also involved in
7 negotiations relating to large scale international cocaine
8 trafficking deals, as well as ecstasy deals.

9 So, frankly, the 100 kilo load that was part of the
10 DEA sting investigation is the tip of the iceberg with respect
11 to this defendant. The guidelines that your Honor has
12 calculated at this point would be appropriate for that conduct
13 alone, for the 100 kilos, whether or not they existed. But
14 your Honor knows that they did exist because of the structure
15 of this investigation, that is, that there was one side led by
16 Mr. Lim who had agreed to provide this to the other side, led
17 from our perspective, at least in a management way, by this
18 defendant, ultimately for those drugs to be provided to this
19 purported South American drug cartel. So there was actually
20 drugs involved in this case, and there were many more deals
21 that were pending at the time.

22 Your Honor has had the benefit of being able to read
23 the defendant's words so that you can see he is a sophisticated
24 criminal. This is a man talking about the use of fake
25 passports, checking whether or not they're viable. He's using

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1 encrypted email communications. He's careful in his operation
2 plan not to include too many details. One of the reasons that
3 there is not a wiretap in this case or some other type of
4 incriminating recording of the defendant's statements beyond
5 what he said in face-to-face meetings is that the defendant was
6 too savvy to do things like that. He thought the emails that
7 he sent were encrypted. As a result of the cooperation with
8 Mr. Le Roux, we were able to obtain them. He would not have
9 said things over the phone or using other means that were
10 interceptable. He was frankly too smart for that.

11 Your Honor can also see from the ops plan and the
12 emails around it that he was a sophisticated operator where he
13 was working. He had people he referred to as political assets.
14 He talks about getting connections in the navy and in the coast
15 guard in order to facilitate the receipt of this shipment.
16 This is somebody who knew what he was doing and he was one of
17 the smartest and most sophisticated people working for Mr. Le
18 Roux and managing this team.

19 On the point of this management argument, your Honor,
20 and aggravating role at this point I think considering it under
21 3553 and the departure that you've referenced, I should have
22 noted this earlier. I think it's relevant at this point as
23 well. In Exhibit B where he's laying out the different
24 features and pending questions of the ops plan, this is
25 Exhibit B to our submission, he lays out what he expects to be

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1 paid and this is on page 2 of the email. The defendant expects
2 a \$25,000 ops bonus upon completion of the shipment. That
3 illustrates that the defendant understood that he was doing
4 more for Mr. Le Roux than others, that he had more
5 responsibility, more risk than others who were involved. And
6 because of that and because of his experience and expertise, he
7 expected a bigger payment than some of the other employees.
8 For example, in his proposal, the political safety asset is
9 looking at a \$15,000 payment, and the ground commander, I
10 believe, is looking it at a \$5,000 payment. This is all set
11 out in Exhibit B. And that's just from the defendant's
12 perspective he was worth more because he was capable of more as
13 a sophisticated international criminal.

14 And that is all information mostly about the drug
15 trafficking conduct in which this man was involved. The
16 weapons trafficking is separate but related and, I submit, a
17 critical feature of this sentencing if the aims of Section
18 3553(a) are to be achieved.

19 To the extent that your Honor is persuaded by the
20 argument that this information is not in front of you because
21 it's not in the PSR, then we request a hearing. At that
22 hearing we would rely on the emails that I've appended to our
23 submission that I think are already properly before the Court.
24 Those emails coupled with recordings that were produced in
25 discovery demonstrate unequivocally that this man was at the

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1 same time all these drug trafficking negotiations were going
2 on, was negotiating weapons deals with real people, actual
3 criminals, somebody he referred to as BP, who I mentioned
4 earlier in connection with separate methamphetamine
5 negotiations, somebody else he referred to as TC, and finally a
6 group of Serbians, all who were looking to participate in
7 weapons deals.

8 Your Honor, these weapons transactions were not as
9 defense counsel just said a thriving legitimate business. At
10 least part of them involved the defendant trying to broker
11 weapons deals involving the confidential sources. Those
12 weren't -- the confidential sources didn't pretend to be
13 representatives of governments or legitimate businessmen. They
14 pretended, purported to be representatives of a South American
15 drug cartel and he was seeking to help them obtain a number of
16 military grade weapons, including surface-to-air missiles.

17 This is extraordinary conduct, your Honor. It's
18 prolonged; it took place over the course of years. I think
19 there's an ample basis in our submission to make all of those
20 findings. This cannot be explained as a mistake or an accident
21 driven by what are admittedly difficult family circumstances at
22 the childhood level. That doesn't excuse what happened here.

23 The guidelines in this case are calibrated towards the
24 100 kilo load and, your Honor, our position is that certainly a
25 guideline sentence based on the calculation your Honor has made

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1 today is appropriate and that for reasons including the
2 departure you're contemplating with respect to the managerial
3 discretion the defendant exercised and also the weapons
4 trafficking that is not at all accounted for in the guidelines,
5 when you look at the nature and circumstances of the offense
6 and you look at the features of the defendant who's here before
7 you that a very, very significant sentence is warranted in this
8 case.

9 THE COURT: Okay. Mr. Stammers, I'll give you an
10 opportunity to address me if you'd like. You can say anything
11 you'd like regarding the appropriate sentence in this case.
12 You don't have to say anything, but if you'd like, now is your
13 opportunity.

14 THE DEFENDANT: Thank you, your Honor. I would like
15 to apologize to the Court.

16 THE COURT: You can remain seated. You don't need to
17 stand up. I don't take any offense to that. You can sit down
18 so you're closer to the microphone.

19 THE DEFENDANT: I would like to apologize to the Court
20 and everyone that has been affected by this. I wish I could
21 take it back that I worked for Paul Le Roux. I wish I had
22 never met the man. I wish David never introduced me to Paul Le
23 Roux, but I can't take that back. I want to -- I've hurt my
24 family. I've hurt my two daughters extremely. I can never
25 take that time back. I can't be there for them. And I just

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1 want to apologize to everybody. I hope, you know, this is a
2 lesson that I've learned and I can push forward from here.
3 Thank you.

4 THE COURT: Okay. Thank you.

5 We're going to need to adjourn the matter so I can get
6 more information regarding this Hunter case. How soon can the
7 parties get me this information?

8 MR. BOVE: Your Honor, we're prepared to submit to the
9 Court today the transcripts of the sentencings and the relevant
10 sentencing submissions for Michael Filter, who was the
11 defendant sentenced to 96 months, and Timothy Vamvakias, the
12 defendant who was sentenced to 240 months. And there's one
13 more defendant in that case, Dennis Gogel. We can send you
14 that transcript as well.

15 And our position ultimately, I think after your Honor
16 has had an opportunity to review these materials, is that these
17 defendants are not at all similarly situated. And with respect
18 to the 240-month sentence that has been described here today,
19 Judge Swain made very specific findings about mitigating
20 circumstances that were unique to Mr. Vamvakias that resulted
21 in that 240-month sentence being appropriate.

22 THE COURT: Defense counsel, do you wish to submit
23 something regarding this, and if so, how much time do you need?

24 MR. MAHER: I would like the opportunity to -- I don't
25 have the materials that the government have discussed, so I'd

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1 like to see that. And if there's anything else that I would
2 need to submit, I think I can get it to your Honor by Monday.

3 THE COURT: Okay.

4 MR. BOVE: Your Honor, we would ask for a day to make
5 a responsive submission, if necessary, or we'll notify the
6 Court that we're not going to put one in.

7 THE COURT: Okay. So let's have the government make
8 their initial submission -- you said today or tomorrow?

9 MR. BOVE: Today, your Honor.

10 THE COURT: Okay. Today. And we'll have the defense
11 file a response Monday. We'll have the government, if they
12 wish to file a reply, to file that on Tuesday.

13 And how is May 25? That's a Wednesday. Does that
14 work for everyone? And let's say at 10 o'clock.

15 MR. MAHER: That's fine.

16 MR. BOVE: Yes, your Honor. Thank you.

17 THE COURT: Okay. And let me just also find out just
18 so I'm clear the government's position on the weapons
19 trafficking. Your position is that I should consider that and
20 consider that how? Are you claiming that these weapons are in
21 connection with this offense or that this is something I should
22 consider as part of the nature and background of the defendant?
23 What is your position as to how I should consider this weapons
24 trafficking?

25 MR. BOVE: The government's position is that this

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1 weapons trafficking conduct took place on a parallel track in
2 the same time frame as the methamphetamine offense for which
3 the defendant is being sentenced right now and that your Honor
4 can and should consider it pursuant to Section 3553 when you're
5 evaluating the defendant before you, that is, it speaks to the
6 level of sophistication of this defendant and it speaks to the
7 level of his general culpability and, frankly, the scope of his
8 criminal conduct.

9 If I could just have one moment, your Honor.

10 THE COURT: Sure.

11 MR. BOVE: Mr. Lockard makes the point which I think
12 is a good one is that it's not just that this weapons
13 trafficking conduct happened in the same time frame. Even as
14 defense counsel has conceded today, there's one meeting in
15 Mauritius where the defendant is working to broker a deal
16 literally while the whole group is together, including the
17 confidential sources who are also supposed to receive the
18 methamphetamine. In our view certainly the Mauritius meeting
19 with the Serbian drug traffickers is very much a relevant
20 feature before your Honor. And then these other aspects of the
21 transactions that are going on with BP and TC, and these are
22 the aliases used by the defendant, that those also are relevant
23 under 3553 when determining the appropriate sentence.

24 THE COURT: So your position is that this meeting in
25 Mauritius and this discussion about weapons is relevant conduct

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1 under the guidelines or no?

2 MR. BOVE: I'm not sure if it's as a legal matter
3 relevant conduct. It is in our view certainly relevant under
4 3553 that the same individuals that he was attempting to send a
5 hundred kilos of methamphetamine to he was also trying to set
6 up deals involving surface-to-air missiles.

7 THE COURT: And I'll let the parties think about that.
8 I don't hold -- the parties can think about that some more. I
9 just raise it with the parties only because in the context of
10 this discussion about the unwarranted sentencing disparities,
11 one of the points that was raised by the government is that the
12 individual who was sentenced to 96 months was very different
13 than Mr. Stammers because he was safety valve eligible and the
14 like. The parties may want to look into whether or not
15 Mr. Stammers in this case is safety valve eligible. I don't
16 know if that's the case or not, but the parties may want to
17 think about that.

18 Under 3553(f), the safety valve, the limitation on
19 applicability of statutory minimums in certain cases, the
20 requirements are that, one, the defendant does not have more
21 than one criminal history point as determined under the
22 sentencing guidelines; two, the defendant did not use violence
23 or credible threats of violence or possess a firearm or other
24 dangerous weapon or induce another participant to do so in
25 connection with the offense; three, the offense did not result

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1 in death or serious bodily injury to any person; four, the
2 defendant was not an organizer, leader, manager or supervisor
3 of others in the offense as determined under the sentencing
4 guidelines and was not engaged in a continuing criminal
5 enterprise as defined in Section 408 of the Controlled
6 Substances Act; and, five, not later than the time of the
7 sentencing hearing, the defendant has truthfully provided the
8 government all information and evidence the defendant has
9 concerning the offense or offenses that were part of the same
10 course of conduct or part of the common scheme or plan, but the
11 fact that the defendant has no relevant or useful other
12 information to provide or that the government is already aware
13 of the information shall not preclude a determination by the
14 court that the defendant has complied with this requirement.

15 Again, I'm not making any ruling on anything like
16 that. But, again, since this was brought up in the context of
17 the potentially unwarranted sentencing disparities and, again,
18 it sounds like from what the government has indicated that
19 these sentencing disparities, to the extent there may be, that
20 they may not be unwarranted. But I just wanted to raise that
21 with the parties as well.

22 Yes, counsel.

23 MR. BOVE: With respect to that point, your Honor,
24 just for the record, the last prong, a truthful disclosure
25 about the conduct and the course of conduct, has not been

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1 satisfied at this point.

2 THE COURT: I understand. But that's why I was -- I
3 just wanted to make sure that everything before we continue on
4 and that the guidelines, again, I made a guideline
5 determination, but I just wanted to raise that with the parties
6 since that was raised.

7 Yes.

8 MR. MAHER: I just want to make clear to someone
9 reading this transcript, that last statement by the government
10 does not mean that Mr. Stammers has made any disclosure to the
11 government and the government has evaluated that as not being
12 truthful. Mr. Stammers hasn't made any disclosures whatsoever
13 to the government. I just want that to be clear.

14 MR. BOVE: That's correct, Judge.

15 THE COURT: Okay. All right. That's fine. I just
16 wanted to make sure there was no misunderstanding. Obviously,
17 Mr. Stammers is not required to apply for the safety valve. I
18 just wondered since counsel had both raised this issue of
19 eligibility if there was some predetermination by both or
20 either side that he was not eligible based on something in
21 there that I have now ruled against.

22 MR. MAHER: And maybe I wasn't clear when I raised the
23 man who received -- Mr. Filter -- the 96-month sentence, I
24 wasn't implying that Mr. Stammers should be treated the same as
25 that man who received the safety valve. What I was merely

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1 trying to illustrate with the Court was there was a range for
2 those defendants and I was just citing the range. That's all,
3 your Honor.

4 THE COURT: That's fine. I just wanted to put that
5 out there so that the record is complete.

6 Anything else from the government?

7 MR. BOVE: No, your Honor. Thank you.

8 THE COURT: Okay. Anything else from the defense?

9 MR. MAHER: No. Thank you.

10 THE COURT: All right. So we're adjourned and I will
11 think about the appropriate sentence. I will get the
12 submissions from the parties. And I will consider again that
13 potential upward departure, as well as that downward departure.

14 Okay. Thank you. Have a good day.

15 o0o